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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/631,883	07/31/2003	Daniel Kahne	PUAM-0257	1801	
23377 WOODCOCK	23377 7590 08/30/2007 WOODCOCK WASHBURN LLP			EXAMINER	
CIRA CENTRE, 12TH FLOOR 2929 ARCH STREET PHILADELPHIA, PA 19104-2891			LUNDGREN, JEFFREY S		
			ART UNIT	PAPER NUMBER	
	,		1639		
			MAIL DATE	DELIVERY MODE	
			08/30/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary    10/631,883		Application No.	Applicant(s)				
Examiner	•	10/631.883	KAHNE ET AL.				
Jeff Lundgren   16.39	Office Action Summary						
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Letterlose for them they be evaluate under the provision of 3°C FR 1.136(ii). In no event, movern, may a reply be limity filed.  If NO pend for raply is applied above, the maximum statutory period will apply and will exist SIX (8) MONTHS from the maling date of this communication.  Falls to be received by the Office liber than these months after the maling date of this communication, even if bindy lited, may reduce any events of parents in adjustment. See 7° FR 1.146(i).  Status  1) □ Responsive to communication(s) filed on 22 June 2007.  2a) □ This action is FINAL.  2b) □ This action is non-final.  3) □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) □ Claim(s) 1.5.6.26.27.102.103.105-107 and 116 is/are pending in the application.  4a) Of the above claim(s) is/are allowed.  5) □ Claim(s) is/are allowed.  6) □ Claim(s) is/are rejected.  7) □ Claim(s) is/are rejected.  7) □ Claim(s) is/are rejected to by the Examiner.  Application Papers  9) □ The specification is objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.81(d).  11) □ The cath or deciaration is objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) □ The cath or deciaration is objected to by the Examiner.  Appl							
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			Patent Application				

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### **DETAILED ACTION**

The finality of the previous Office Action is vacated, and Applicants' amendment is entered.

### Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1, 5, 6, 26, 27, 102, 103, 105-107 and 116 (in-part), are drawn to a vancomycin derivative of SEQ ID NO:1, wherein Y is a single bond, classified in class 530, subclass 350.
- II. Claims 1, 5, 6, 26, 27, 102, 103, 105-107 and 116 (in-part), are drawn to vancomycin derivative of SEQ ID NO:1, wherein Y is O, NR<sub>1</sub>, or S, classified in class 530, subclass 350.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are directed to related product. The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the inventions as claimed materially different and are mutually exclusive. Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

These inventions are independent or distinct for the reasons given above and a search and examination of multiple inventions would present a serious burden on the Office because the inventions have acquired a separate status in the art, the inventions require a different field of search (see MPEP § 808.02), and the inventions have a separate status in the art due to their recognized divergent subject matter. Accordingly, restriction for examination purposes as indicated is proper.

A telephone call was made to Ms. Verrechio on July 25, 2007 to request an oral election to the above restriction requirement, but did not result in an election being made.

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Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that 1-month (not less than 30 days) shortened statutory period will be set for reply when a written requirement is made without an action on the merits. This period may be extended under the provisions of 37 CFR 1.136(a). Such action will not be an "action on the merits" for purposes of the second action final program. M.P.E.P. § 809.02(a).

## Correction of Inventorship

Applicants are reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

#### Conclusions -

If Applicants should amendment the claims, a complete and responsive reply will clearly identify where support can be found in the disclosure for each amendment. Applicants should point to the page and line numbers of the application corresponding to each amendment, and provide any statements that might help to identify support for the claimed invention (e.g., if the amendment is not supported *in ipsis verbis*, clarification on the record may be helpful). Should

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Applicants present new claims, Applicants should clearly identify where support can be found in

the disclosure.

Any inquiry concerning this communication or earlier communications from the

Examiner should be directed to Jeff Lundgren whose telephone number is 571-272-5541. The

Examiner can normally be reached from 7:00 AM to 5:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's

supervisor, James Schultz, can be reached on 571-272-0763. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JSL

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